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Constitutional Law—Confessions and Due Process (Watts v. Indiana, 338 U.S. 49 (1949))

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the evidence illegally obtained on the ground that when the right to be secure from unreasonable searches and seizures is weighed against the public policy of suppressing crime, the individual right is deemed to be subordinate to this policy.²⁴

It is submitted that this reasoning is both erroneous and dangerous. Since the arbitrary utilization of the power to arrest and search is a step towards a totalitarian state, it would seem to follow that the guaranty of the Fourth Amendment should be considered as one of those fundamental rights protected by the "due process clause" of the Fourteenth Amendment.

CONSTITUTIONAL LAW — CONFESSIONS AND DUE PROCESS. —

Petitioner was convicted of murder while attempting to commit rape. The judgment was affirmed by the Supreme Court of Indiana.¹ On writ of certiorari, the Supreme Court of the United States, in reviewing the facts, found that the police, in attempting to procure a confession from the petitioner, had questioned him for five to ten hours on six separate days. He was kept two days in solitary confinement in a cell called "the hole." He was never given sufficient food or rest during this period to satisfy normal needs. Petitioner was not given a prompt preliminary hearing as required by Indiana law; he was without friendly or professional aid and was not advised of his constitutional rights. *Held*, conviction reversed. The coercive methods employed by the police officials to elicit the confession were unconstitutional as a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.² *Watts v. Indiana*, 338 U. S. 49 (1949).

The *Watts* case was the first of three cases decided the same day, all reversing convictions where confessions had been obtained through coercion.³

In reviewing cases of this nature, the Supreme Court is not concluded by the findings of a state court that the confession was

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²⁴ In coming to this conclusion the Court relied upon *People v. Defore*, 242 N. Y. 13, 150 N. E. 586 (1926).

¹ *Watts v. State*, 226 Ind. 655, 82 N. E. 2d 846 (1948).

² U. S. CONST. AMEND. XIV, § 1. "... nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

³ *Turner v. Pennsylvania*, 338 U. S. 62 (1949). The petitioner was constantly interrogated from four to six hours a day for five days. He was denied the right to see friends or relatives and was not informed of his right to remain silent. The suspect was not given a preliminary hearing until the interrogation had produced a confession. *Harris v. South Carolina*, 338 U. S. 68 (1949). Here the suspect was held in jail several days and on one occasion was interrogated for a twelve-hour period. He was not given a hearing or informed of his rights. Petitioner was denied benefit of consultation with an attorney or friends.

voluntary, but may make an independent determination of this fact.⁴ It has the power to set aside a conviction even though the evidence apart from the confession might have been sufficient to sustain the verdict.⁵ Where the facts show that the confession was acquired solely through physical torture, it will be treated as void.⁶ If the suspect is in such poor physical condition that he would readily confess anything, the Court will view the proceedings with great care.⁷ An analysis of the cases readily shows that the so called "third degree" is used principally on the ignorant and those holding a humble place in society; and therefore, the age of the prisoner,⁸ his intelligence⁹ and even his personality¹⁰ are important measuring rods to determine whether his liberty has been unlawfully impaired. The mere fact that the confession was obtained during police interrogation does not render it invalid,¹¹ nor does the Constitution forbid the use of a subsequent voluntary confession after the police have obtained an unlawful one.¹²

Although a general rule cannot be laid down to determine when a confession is invalid,¹³ the Supreme Court usually tries to ascertain whether it can be considered as issuing from an individual with a free choice¹⁴ and whether it is trustworthy.¹⁵ In determining this question the Court will first make a review of all the pre-trial abuses and then ask whether they were of such a nature as would reasonably influence the veracity of the confession. If the question is

⁴ *Lisenba v. California*, 314 U. S. 219 (1941); *Chambers et al. v. Florida*, 309 U. S. 227 (1940).

⁵ *Malinski et al. v. New York*, 324 U. S. 401 (1945).

⁶ *Brown et al. v. Mississippi*, 297 U. S. 278 (1936).

⁷ *Ziang Sung Wan v. United States*, 266 U. S. 1 (1924). Wan was interrogated continually though very ill from an attack of Spanish influenza.

⁸ *Haley v. Ohio*, 332 U. S. 596 (1948). The Court in this case took into consideration the youthfulness of the suspect and even stated that the formal act of advising the youth of his rights immediately before he signed the confession did not alter the result. The reasoning of the Court was that such a youngster would not be able to appreciate mere formal declarations.

⁹ *Ward v. Texas*, 316 U. S. 547 (1942) (ignorant youth); *White v. Texas*, 310 U. S. 530 (1940) (illiterate farm hand).

¹⁰ "He exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer." *Lisenba v. California*, 314 U. S. 219, 241 (1941).

¹¹ *Lyons v. Oklahoma*, 322 U. S. 596 (1944).

¹² *Ibid.*

¹³ See *Betts v. Brady*, Warden, 316 U. S. 455, 462 (1942).

¹⁴ *Ashcraft v. Tennessee*, 322 U. S. 143 (1944); *Lyons v. Oklahoma*, 322 U. S. 596 (1944); *Hysler v. Florida*, 315 U. S. 411 (1942); *Wilson v. United States*, 162 U. S. 613 (1896).

¹⁵ One of the arguments in the dissenting opinion of the principal case was that in revealing certain facts at the trial, several of the admissions contained in the confession were substantiated. *Watts v. Indiana*, 338 U. S. 49, 60 (1949).

answered in the affirmative the confession is said to be involuntary.¹⁶ While it may be true that the facts in the *Watts* case are not unique, the language of the Court indicates that it will demand a stricter enforcement of the individual's rights. The Court, in short, states that regardless of whether the confession can be said to be trustworthy or to have been given with mental freedom, if it is the product of improper police procedure it cannot be regarded as lawful.¹⁷ The Court points out that it is the historic function of the due process clause to assure the individual of proper procedure before his liberty is curtailed,¹⁸ and regards the decision of the Indiana Court as violating that function.¹⁹ The dissenting argument in the Supreme Court decision that injustice might occur in particular cases and that police officials would be unduly burdened is best answered by the majority's statement: "But the history of the criminal law proves overwhelmingly that brutal methods of law enforcement are essentially self-defeating, whatever may be their effect in a particular case."²⁰

Although the Court realizes that unwarranted restrictions on police officials would retard the administration of the criminal law, it will not tolerate those actions which infringe upon the individual's constitutional rights.

CONSTITUTIONAL LAW — RELEASED TIME PROGRAM IN NEW YORK. — Petitioner, a citizen and taxpayer, and parent of children attending public school, sought to review the determination of the Board of Education in establishing the "released time" program of religious instruction with the ultimate aim of compelling the discontinuance of such program. Petitioner contended that such program was violative of the First Amendment to the Constitution of the United States. *Held*, petition dismissed as a matter of law. The First Amendment was not violated by the "released time" program as conducted in New York City. To restrain authorized educational agencies from granting released time for these purposes would be a suppression of the right to freedom of religion which is guaranteed

¹⁶ "In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort." *Wilson v. United States*, 162 U. S. 613, 623 (1896).

¹⁷ *Watts v. Indiana*, 338 U. S. 49 (1949).

¹⁸ *Ibid.*; *accord*, *U. S. ex rel. Montgomery v. Rager*, 86 F. Supp. 382, 388 (N. D. Ill. 1949). The court in this case stresses that due process means the due course of proceedings in the administration of justice.

¹⁹ See note 1 *supra*. The Indiana court stated in substance that if the confession was not given through fear or inducement, then the previous police procedure is unimportant.

²⁰ *Watts v. Indiana*, 338 U. S. 49, 55 (1949).